IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1767 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI SHANKERBHAI PATEL
Versus
ASHOKBHAI BABABHAI SHAH AND ANOTHER

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Appearance :
MR DJ BHATT for the petitioner

MR MEHUL S SHAH for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 27/03/2006

ORAL JUDGMENT

By filing this revision application the petitioner had challenged the order passed by the learned Judge of the City Civil Court, Ahmedabad dated 18.09.1998 by which the

application preferred by the present respondents is allowed by the Court and ex parte decree passed in Civil Suit No.4438 of 1997 dated 26.2.1998 was set aside. The present applicant herein is the original plaintiff of Civil Suit No.4438 of 1997 which was filed for recovery of certain amount from the defendants. In the said suit the defendants had not put up their appearance and, therefore, an ex parte decree was passed. The present respondents filed application under Order 37 Rule 4 of the Civil Procedure Code for setting aside the decree passed against them ex parte. The case of the respondents is that a maid servant had received the summons but she had forgotten to handover the same to them and that is why they were not aware about the pendency of the suit. Upon enquiry, it was ultimately found that summons was sent on 14.10.1997 and the same was affixed on the door of the house. The learned appellate Judge after going through the proceedings of the case came to the conclusion that service of the summons was not made in proper form and the learned Judge found that in the interest of justice the suit is required to be decided on merits by giving opportunity to the defendants to defend the suit. The Court found that the defendants have made out special circumstances and therefore set aside the ex parte order and directed that the suit be proceeded from the stage at which the decree was passed. The said order is impugned in this revision.

It is required to be noted that the powers of this Court under Section 115 of the Civil Procedure Code are very limited. It cannot be said that the learned Judge has committed any error of jurisdiction while passing the impugned order. In the

case of The Managing Director (MIG), Hindustan Aeronautics Limited v. Ajit Prasad Tarway, AIR 1973 SC 76 even if the order is contrary to law is no ground for interference in an application filed under Section 115 of the Civil Procedure Code. Considering the aforesaid aspects of the matter, in my view, it is not a case in which the discretion exercised by the Court below by which he has given the liberty to the defendants to defend the suit is required to be interfered with by this Court in exercise of its jurisdiction under Section 115 of the Code of Civil Procedure. It cannot be said that the order impugned suffers from any illegality. Therefore, I do not find any substance in this revision. The same is dismissed accordingly. Rule is discharged. The trial Court shall now proceed with the suit without any further delay. Writ to be sent to the lower court forthwith. Record and proceedings, if any, be sent to the trial court forthwith.

(P.B. Majmudar, J.)

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